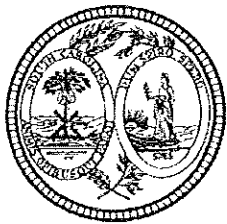


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Charles L.A. Terreni  
Chief Clerk/Administrator  
Phone: (803) 896-5133  
Fax: (803) 896-5246

## The Public Service Commission State of South Carolina

COMMISSIONERS  
Elizabeth B. "Lib" Fleming, Fourth District  
Chairman  
John E. "Butch" Howard, First District  
Vice Chairman  
David A. Wright, Second District  
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G. O'Neal Hamilton, Fifth District  
Mignon L. Clyburn, Sixth District  
Swain E. Whitfield, At-Large

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Posted: dd

Dept: SA

Date: 10/8/08

Time: 3:20

Legal Department  
F. David Butler, Senior Counsel  
Phone: (803) 896-5113  
Fax: (803) 896-5231

October 7, 2008

**Certified Mail -Return Receipt Requested**

John J. Pringle, Jr.  
Ellis, Lawhorne & Sims, P. A.  
Post Office Box 2285  
Columbia, SC 29202

C. Lessie Hammonds, Esquire  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201

Re: Application of NexUSTel, LLC  
Commission Docket No. 2008-261-C

Dale

Dear John and Lessie:

Enclosed please find a proposed order in the above-captioned docket, which is being delivered to you pursuant to the requirements of 26 S.C. Code Ann. Regs. 103-841(C). As parties of record in this NexUSTel case, you have ten (10) days from your receipt of this proposed order to file exceptions, present briefs, and/or file written requests for oral argument to the Commission, if you should desire to do so. If none of these are received by me within 10 days of your receipt of the proposed order, I will request that the Commission issue its order in this case based upon the record of the formal proceeding and the proposed order.

Thank you in advance for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "F. David Butler".

F. David Butler  
Hearing Examiner

FDB/dd

Enclosure

cc: Joseph Melchers, Chief Legal Advisor  
Douglas Pratt, Advisory Staff

RECEIVED  
OCT 08 2008  
PSC SC  
DOCKETING DEPT.

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2008-261-C - ORDER NO. [Order No.]

OCTOBER 7, 2008

IN RE: Application of NexUSTel, LLC for a	) ORDER GRANTING
Certificate of Public Convenience and	) CERTIFICATE AND
Necessity to Provide Resold Interexchange	) APPROVING MODIFIED
Telecommunications Services to and from all	) ALTERNATIVE
Points throughout the State of South Carolina	) REGULATION-
and for Alternative Regulation	) PROPOSED ORDER OF
	) THE HEARING
	) EXAMINER

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of NexUSTel, LLC (“NexUSTel” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2007) and the rules and regulations of the Commission. By its Application, NexUSTel also requests alternative regulation of its business interexchange services consistent with Commission Orders, and waiver of certain Commission regulations.

The Commission’s Docketing Department instructed NexUSTel to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of NexUSTel and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. NexUSTel complied with this instruction

and provided the Commission with proof of publication of the Notice of Filing. No Protests or Petitions to Intervene were filed. Subsequently, NexUSTel and the Office of Regulatory Staff (“ORS”) filed a Settlement Agreement attached hereto as Order Exhibit 1. A hearing was convened on October 6, 2008, at 2:30 p.m. in the offices of the Commission in Columbia, South Carolina, before David Butler, Hearing Examiner. NexUSTel was represented by John J. Pringle, Jr., Esquire. The Office of Regulatory Staff (“ORS”) was represented by C. Lessie Hammonds, Esquire.

Jorge Asecio, President of the Company, testified in support of the Company’s Application. The record reveals that NexUSTel is a limited liability company organized under the laws of the State of Delaware and that it is registered to transact business in South Carolina. According to Mr. Asecio, the Company seeks authority as a reseller of interexchange services. Mr. Asecio explained the Company’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures. The Company intends to concentrate its marketing on the Hispanic community. Mr. Asecio also discussed NexUSTel’s technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. Asecio offered that NexUSTel possesses sufficient financial resources to support its operations in South Carolina.

With regard to management and technical capabilities, the Company’s Application and Mr. Asecio’s testimony both evidence that NexUSTel’s management has extensive experience in telecommunications, information technology, regulatory matters, accounting, and finance. Mr. Asecio also testified that NexUSTel will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr.

Asecio offered that approval of NexUSTel's Application would serve the public interest.

Mr. Asecio, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in New York. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). NexUSTel maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP"). In addition, the Company requests that it not be required to publish local exchange directories and therefore requests waiver of 26 S.C. Code Ann. Regs. 103-631. Also, NexUSTel requests waiver of 103-612.2.3, which requires the filing of operating area maps.

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. NexUSTel is organized as a limited liability company under the laws of the State of Delaware, and is authorized to do business in South Carolina by the Secretary of State.
2. NexUSTel desires to operate as a provider of resold interexchange services in South Carolina.
3. We find that NexUSTel possesses the managerial experience and capability to operate as a resale provider of interexchange services in South Carolina.

4. We find, based on the financial statements submitted by the Company and the testimony at the hearing, that NexUSTel possesses sufficient financial resources to provide the services as described in its Application and testimony.

5. We find that the issuance of a Certificate of Public Convenience and Necessity to NexUSTel to operate as a reseller of interexchange services in South Carolina would be in the best interest of the citizens of South Carolina by providing more innovative services.

6. NexUSTel requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds NexUSTel's requested waiver reasonable and understands the potential difficulty presented to NexUSTel should the waiver not be granted. Further, we find that a waiver of 26 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable. Additionally we find that a waiver of 26 S.C. Code Ann. Regs. 103-631 and 103-612.2.3 is reasonable and in the public interest.

7. The Company has the managerial, technical, and financial resources to provide the services as described in its Application.

#### **CONCLUSIONS OF LAW**

1. The Commission concludes that NexUSTel possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that NexUSTel will participate in the support of universally available telephone service at affordable rates to the extent that NexUSTel may be required to do so by the Commission.

3. The Commission concludes that NexUSTel will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of NexUSTel's Application to provide intrastate telecommunications services within South Carolina will serve the public interest by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by NexUSTel will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate interexchange telecommunications services as requested by NexUSTel and as set forth in its Application and Mr. Asecio's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to NexUSTel to provide resold and facilities-based intrastate interexchange telecommunications services.

8. The Commission adopts a rate design for NexUSTel for its residential interexchange services which include maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application*

of *GTE Sprint Communications Corporation, etc.*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. NexUSTel shall not adjust its residential interexchange rates for end-users below the approved maximum level without notice to the Commission and to the public. NexUSTel shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications, etc.*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2007).

10. The Commission concludes that NexUSTel's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to

those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing.

If an investigation of a particular tariff filing is instituted within seven days of the filing date, the tariff filing will then be suspended until further Order of the Commission. If an investigation is instituted on a particular tariff filing, notice of the investigation will be provided to the person or entity making the tariff filing and to the Commission. The notice is timely if dated within seven days of the filing date.

11. We conclude that NexUSTel’s request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted, since strict compliance with the regulation potentially causes undue hardship on that Company. We also grant exemption from the policies requiring the use of USOA. In addition, we grant waiver of 26 S.C. Code Ann. Regs.



103-631, which requires publication of a local telephone directory, and 26 S.C. Code Ann. Regs. 103-612.2.3, which requires the filing of operating area maps.

12. The Settlement Agreement between the parties should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to NexUSTel to provide intrastate interexchange service as a facilities-based carrier or through the resale of services authorized for resale by tariffs of carriers approved by the Commission.

2. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, NexUSTel shall file its revised tariff, if any, and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to [etariff@psc.sc.gov](mailto:etariff@psc.sc.gov) to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The filed tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations, as well as the provisions of the NexUSTel-ORS Settlement Agreement.

4. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. NexUSTel shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If NexUSTel changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, NexUSTel shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (47 C.F.R. § 51.209). Specifically, NexUSTel shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. NexUSTel shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, NexUSTel shall keep financial records on an intrastate basis for South Carolina to

comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov), and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund ("USF") worksheet, which may be found on the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **July 1<sup>st</sup>** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. NexUSTel shall file the names, addresses, and telephone numbers of these

representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.sc.gov/forMr.asp](http://www.psc.sc.gov/forMr.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, NexUSTel requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2007), which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The Commission finds NexUSTel’s requested waiver reasonable and understands the potential difficulty presented to NexUSTel should the waiver not be granted. The Commission therefore grants the requested waiver. However, NexUSTel shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and NexUSTel shall promptly notify the Commission and ORS if the location of its books and records changes.

12. NexUSTel also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, NexUSTel maintains its book of accounts in accordance with Generally Accepted Accounting Principles. GAAP is used extensively by interexchange carriers and other

competitive telecommunications carriers. Accordingly, NexUSTel requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above, as well as waivers of 26 S.C. Code Ann. Regs. 103-631 and 103-612.2.3.

13. The Settlement Agreement between the parties is hereby approved.

14. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

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Elizabeth B. Fleming, Chairman

ATTEST:

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John E. Howard, Vice Chairman  
(SEAL)

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF  
SOUTH CAROLINA

DOCKET NO. 2008-261-C

IN THE MATTER OF:	)	CERTIFICATE OF SERVICE
Application of NexUSTel, LLC for a	)	(BY CERTIFIED US MAIL)
Certificate of Pubic Convenience and Necessity	)	(Return Receipt Requested)
To Provide Resold Interexchange Telecommuni-	)	
cations Services to and from all Points	)	
Throughout the State of South Carolina and for	)	
Alternative Regulation	)	

I, Dale E. Davis, do hereby certify that I have on the date indicated below served the following named individual(s) with one (1) copy of the pleading(s) listed below by causing said copies to be deposited with the United States Postal Service, by certified mail, return receipt requested, postage prepaid and addressed as follows:

PARTIE(S) SERVED:

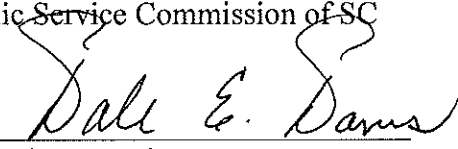
John J. Pringle, Jr.  
Ellis, Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, SC 29202

C. Lessie Hammonds, Esquire  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201

PLEADING(S): ORDER GRANTING CERTIFICATE AND APPROVING  
MODIFIED ALTERNATIVE REGULATION – PROPOSED ORDER OF THE  
HEARING EXAMINER

Public Service Commission of SC

By:

  
Dale E. Davis

Columbia, South Carolina  
October 7, 2008